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April 8, 1988

FEDERAL EXPRESS

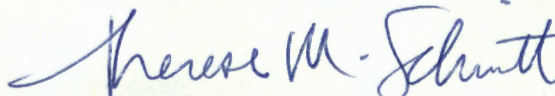
Regional Hearing Clerk  
EPA Region III  
841 Chestnut Building  
Philadelphia, PA 19107

RE: Ellicott Machine Corporation  
Docket No. TSCA-III-315

Dear Sir or Madam:

Enclosed please find the Answer and Request for Hearing of Ellicott Machine Corporation in the captioned matter. Please contact me at the above address or phone number if you should have any questions about this filing.

Very truly yours,



Therese M. Schmitt

Attorney for Ellicott Machine Corp.

TMS:dks  
Enclosure

1426T/23

cc: Stephen Glagola  
Elizabeth S. Spencer, Esq.



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107



IN RE: \* DOCKET NO. TSCA-III-315  
ELLICOTT MACHINE CORPORATION \*  
Baltimore, Maryland \*  
Respondent \* COMPLAINT AND NOTICE OF  
\* OPPORTUNITY FOR HEARING  
\*

\* \* \* \* \*

ANSWER AND REQUEST FOR HEARING

Respondent Ellicott Machine Corporation ("Ellicott"),  
by its undersigned attorney, hereby answers the Complaint of  
the Environmental Protection Agency ("EPA") in the captioned  
matter.

COUNT I

1. Ellicott admits that it is a corporation doing  
business in the State of Maryland.

2. Ellicott admits that on August 28, 1987, one Karen  
D. Gray inspected its facility in the 1600 block of Bush  
Street, Baltimore, Maryland 21230. Ms. Gray identified herself  
as being employed by the Maryland Department of the  
Environment, Waste Management Administration. To the extent  
that Paragraph 2 of the Complaint alleges more, Ellicott lacks  
the information or knowledge necessary to form a belief as to  
the truth of the allegation(s).

3. Ellicott admits that at the time of the inspection it had in service one (1) transformer (Serial No. 171364) which was identified by nameplate data as containing 316 gallons (1895 kilograms) of "Pyranol" fluid. To the extent that Paragraph 3 of the Complaint alleges more, either it states a legal conclusion which Ellicott is not required to admit or deny or Ellicott lacks the information or knowledge necessary to form a belief as to the truth of the allegation(s).

4. Paragraph 4 of the Complaint states legal conclusions which Ellicott is not required to admit or deny.

5. Ellicott admits that prior to the August 28th inspection it had not documented quarterly visual inspections of the above-noted transformer during the period from August 1981 through June 1986. To the extent that Paragraph 5 of the Complaint alleges more, either it states a legal conclusion which Ellicott is not required to admit or deny or Ellicott denies the allegation(s).

6. Paragraph 6 of the Complaint states a legal conclusion which Ellicott is not required to admit or deny.

#### COUNT II

7. Ellicott here incorporates by reference its answers in Paragraphs 1 through 3 above.

8. Paragraph 8 of the Complaint states legal conclusions which Ellicott is not required to admit or deny.



9. Ellicott admits that at the time of the August 28th inspection it had not sent a letter to the Baltimore City Fire Department regarding the above-noted transformer. To the extent that Paragraph 9 of the Complaint alleges more, either it states a legal conclusion which Ellicott is not required to admit or deny or Ellicott denies the allegation(s).

10. Paragraph 10 of the Complaint states a legal conclusion which Ellicott is not required to admit or deny.

#### COUNT III

11. Ellicott here incorporates by reference its answers in Paragraphs 1 through 3 above.

12. Paragraph 12 of the Complaint states legal conclusions which Ellicott is not required to admit or deny.

13. Ellicott admits that at the time of the August 28th inspection it had not marked the fence enclosing the above-noted transformer with either of the marks shown in Figure 1 or Figure 2 of 40 C.F.R. § 761.45. To the extent that Paragraph 13 of the Complaint alleges more, it states legal conclusions which Ellicott is not required to admit or deny.

14. Paragraph 14 of the Complaint states a legal conclusion which Ellicott is not required to admit or deny.

#### COUNT IV

15. Ellicott here incorporates by reference its answers in Paragraphs 1 through 3 above.

16. Paragraph 16 of the Complaint states legal conclusions which Ellicott is not required to admit or deny.

17. Ellicott admits that at the time of the August 28th inspection it had not prepared documents containing the information set forth in 40 C.F.R. § 761.180(a)(1)-(3) for the years 1978 through 1986.

18. Paragraph 18 states a legal conclusion which Ellicott is not required to admit or deny.

#### DEFENSES

Ellicott further sets forth the following argument as a defense to the Complaint:

A proceeding such as the captioned one, brought by an agency of the United States government seeking civil penalties under the Toxic Substances Control Act, is governed by the general five (5)-year statute of limitations in 28 U.S.C. § 2462. To the extent that any penalties sought to be obtained are based upon alleged violations occurring more than five years before the instant action was brought, such penalties are time-barred as a matter of law.

#### REQUEST FOR HEARING

Ellicott hereby requests a hearing on the issues raised by the Complaint and this Answer and any additional relevant issues identified at or before a prehearing conference, if one is scheduled, or up to a reasonable time before the hearing if no prehearing conference is held.

ISSUES

In addition to the issues necessarily raised by the Complaint, the above paragraph-by-paragraph answers thereto, and the above-noted defense, Ellicott wishes to raise the following issues at the hearing on the captioned matter:

First, whether the amounts of the penalties sought by EPA in this proceeding were determined in accordance with applicable law and EPA's own policies and guidelines for the computation of such civil penalties.

Second, whether certain facts that Ellicott will prove sufficiently eliminate or mitigate the potential for environmental damage arising out of any violations that may be established so as to make the rationale underlying imposition of policy-based penalties for such violations inapplicable in this instance; and whether imposition of the proposed penalties therefore would be arbitrary, irrational, or otherwise inappropriate.

Third, whether the proposed penalties are otherwise valid, reasonable, and appropriate.

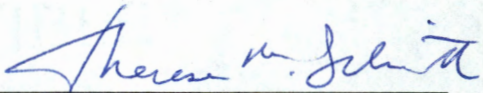
April 8, 1988  
Date

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(301) 244-7716

Attorney for Ellicott Machine  
Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April, 1988  
a copy of the foregoing Answer and Request for Hearing was  
mailed, first class mail, postage prepaid, to Elizabeth S.  
Spencer, Esquire, Assistant Regional Counsel, U.S.  
Environmental Protection Agency, 841 Chestnut Building,  
Philadelphia, PA 19107.

  
Therese M. Schmitt